TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 82.

JOSEPH MOVIUS, SURVIVOR OF FRANCIS WIGAND, PLAINTIFF IN ERROR,

vs.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JUNE 23, 1875.

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INDEX.

	Original.	Print.
Writ of error	*a*	1
Return	*b*	1
Declaration	3	2
Defendant's plea	7	3
Verdict	9	4
Judgment	10	4
Bill of exceptions	12	5
Assignment of errors	25	9
Joinder in error	27	9
Bond	29	10
Citation and service	31	11

a UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Joseph Movius, survivor of Francis Wigand and Joseph Movius, plaintiff, and Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said Joseph Movius, survivor as aforesaid, as is said, and as appears by his complaint, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the capital, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 21st day of December, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-ninth.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

Allowed:

SAM'L BLATCHFORD,
District Judge.

DECEMBER 21*st*, 1874.

(Indorsed:) Supreme Court of the United States. Joseph Movius, survivor, &c., plaintiff in error, vs. Chester A. Arthur, defendant in error. Writ of error. Due service hereof admitted Dec. 23, 1874. U. S. att'y for def't. Filed Dec. 21, 1874.

UNITED STATES OF AMERICA,
South. District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the south. district of New York, in the second
b circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from one to thirty-two, inclusive, contains a true and complete transcript of the record and proceedings had in said court in the case of Joseph Movius, survivor of Francis Wigand and Joseph Movius, plaintiff in error, versus Chester A. Arthur, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, this 14th day of June, in the

year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the said United States the ninety-ninth.

[SEAL.] KENNETH G. WHITE,
Clerk, &c.

1 U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of the term of October, 1872, to wit, of the 21st day of February, in the year of our Lord one thousand eight hundred and seventy-three.

Witness the honorable Lewis B. Woodruff, one of the judges of the said circuit court.

KENNETH G. WHITE, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the 21st day of February, 1873, in October term of the year 1872, before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, came Francis Wigand and Joseph Movius, by Chase, Hartley & Coleman, their attorney', and brought into the said
2 court, before the aforesaid judges thereof, then there, their certain declaration against Chester A. Arthur, being in custody, &c., of a plea of trespass on the case upon promises; which said declaration follows in these words, that is to say:

The United States of America, circuit court of the United States for the southern district of New York.

FRANCIS WIGAND & JOSEPH MOVIAS
vs.
CHESTER A. ARTHUR.

In the second circuit, of the October term in the year one thousand eight hundred and seventy-three, to wit, of the 21st day of February, A. D. 1873, Francis Wigand & Joseph Movius, plaintiffs in this suit, come into court, and by Chase, Hartley & Coleman, their attorneys, give the court, now here, to be informed that heretofore, to wit, on the twenty-ninth day of January last past, this action was commenced in ths supreme court of the city and county of New York, according to the laws of the State of New York, and the rules and practice of said court, in favor of the said plaintiffs, against the defendant herein, upon the causes of action hereinafter set forth, and the summons therein filed with the clerk of said court. That the defendant afterwards, by his attorney, George Bliss, j'r, esquire, duly appeared in said action, and thereupon, on the twenty-first day of February, in the year one thousand eight hundred and seventy-three, the said action was duly
4 removed by writ of certiorari for further prosecution into this court, according to the act of Congress in such case made and provided; and the clerk of the said supreme court did thereupon return the said writ, with the said summons, and duly file the same in this court, which allegations the defendant admits to be true.

Wherefore let the further proceedings and trial in this action be continued in this court.

And the said plaintiffs, who are partners in trade under the firm-name of F. Wigand & Company, & as such firm, by their said attorneys, complain of said defendant of a plea of trespass on the case for premises, for that whereas said defendant, on the 29th day of January, eighteen hundred and seventy-three, at New York City, in the district aforesaid, was indebted to said plaintiffs in the sum of one hundred and seventy-three and $\frac{39}{100}$ dollars lawful money of the United States of America, for duties on merchandise, to wit, patent-leather & enamelled cowhides,
5 imported into and entered at the collection-district of the United States for the city of New York, on or about the 3rd day of August, the 30th day of October, & the 7th day of December, in the year one thousand eight hundred and seventy-two, in the following vessels, to wit, the steamers Java and Parthia, from Liverpool, in England, unlawfully demanded, exacted, and received, at said New York City, by said defendant, then collector of the customs for said district, under color of a law of the United States for the collection of duties on imports, and paid by the said plaintiffs under protest and appeal in writing in due form of law.

And being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money when he, said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, was indebted to the said plaintiffs in the further sum of two hundred dollars lawful
6 money of the United States of America, for money before that time lent and advanced by said plaintiffs to said defendant, and at the special instance and request of the said defendant; and for other money by the said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant; and for other money by the said defendant before that time had and received to and for the use of the said plaintiffs;

And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned when he should be thereunto afterwards requested;

Nevertheless, said defendant, although often afterwards requested so to do, has not paid said sums of money, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same, or any part thereof, to the said plaintiffs has hitherto refused and still does refuse, to the damage of the said plaintiffs of four hundred dollars; and
7 therefore the said plaintiffs bring suit, &c.

CHASE, HARTLEY & COLEMAN,
Attorneys for the Plaintiffs.

Plea.

United States circuit court, southern district of New York.

CHESTER A. ARTHUR *ads.* FRANCIS WIGAND & AL.

And the said defendant, Chester A. Arthur, by George Bliss, j'r, his

attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant; and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

And hereupon the process thereof is continued between the parties aforesaid in this same court, before the judges thereof, until the
8 first Monday of April, 1874, at the southern district of New York. And the same day is given to the parties aforesaid at the same place.

At which said last-mentioned day, before the judges aforesaid, at the place last aforesaid, come as well the said Joseph Movius, by his attorney aforesaid, as the said defendant, by his attorney aforesaid, and the said Francis Wigand comes not; and hereupon the said Joseph Movius gives the court here to understand and be informed that after the last continuance of the plea aforesaid, and before this day, the said Francis Wigand died, and the said Joseph Movius survived him; which allegation the said defendant doth not deny, but admits the same to be true.

Therefore let no further proceedings be had in this cause at the suit of the said Francis Wigand.

Therefore the issue above joined is ordered by the said circuit court to be tried at the circuit court appointed to be held at the U. S. court-buildings, No. 41 Chambers street, in the city of New York, in the district and circuit aforesaid, on the third Monday of October, 1874.

9 And now at this day, to wit, the third Monday of October, 1874, before the judges aforesaid, at the U. S. court-buildings in the city of New York, comes the said plaintiff, by his attorney aforesaid, and Nathaniel Shipman, esquire, district judge, holding the said circuit court, before whom the said issue was tried, hath sent hither his record had before him, in these words, to wit: Afterwards, that is to say, on the day and at the place within contained, before Nathaniel Shipman, district judge, holding the said circuit court within named, according to the form of the statute in such case made and provided, come as well the within-named plaintiff as the within-named defendant, by their respective attorneys within mentioned, and the jurors of the jury summoned to try the said issue being called, also come, who to speak the truth of the matters within contained being chosen, tried, and sworn, say upon their oath that the said defendant did not undertake and promise in manner and form as the said plaintiff hath within complained against him.

10 Therefore it is considered that the said plaintiff take nothing by his said declaration, but that he be in mercy, &c. And that the said defendant do go thereof without day, &c.

And it is further considered by the said court now here that the said defendant do recover against the said plaintiff thirty-seven $\frac{57}{100}$ dollars for his costs and charges by him about his defence in this behalf laid out and expended, by the said court here adjudged to the said defendant, and with his assent, according to the form of the statute in such cases made and provided; and that the said defendant have execution thereof, &c.

Judgment signed this 17 day of December, 1874.

R. E. STILWELL,
Dep. Clerk.

(Endorsed:) Vol. 8, p. 483, U. S. circuit court. Chester A. Arthur
ad's Joseph Movius, surv., &c. Judgment record. Geo. Bliss,
11 attorney for defendant. Costs, $37.57. Filed Dec. 17, 1874.

Bill of exceptions.

12 U. S. circuit court, southern district of New York, in the second circuit.

JOSEPH MOVIUS, SURVIVOR, &C., *vs.* CHESTER A. ARTHUR.

Be it remembered that in the trial of the above-entitled cause, on the 5th and 6th days of November, 1874, the plaintiffs then and there excepted to the refusal of this court to instruct the jury in matter of law as requested by the plaintiffs, and also then and there excepted to such portions of the charge of the court as are hereinafter stated, and file this their bill of exceptions.

It appeared in evidence upon the trial before the jury that in the year 1872 Francis Wigand and Joseph Movius constituted the firm of F. Wigand & Co., and that after the commencement of this action Francis Wigand died, leaving Joseph Movius the sole surviving partner.

That the defendant, Chester A. Arthur, was, on August 1st, 1872, and ever since has been, the collector of customs of the United States at the port of New York.

13 Between August 1st and December 31st, 1872, the original plaintiffs, F. Wigand & Co., imported from foreign countries into the port of New York, and duly entered at that custom-house, several invoices of "veaux vernis," which was testified to mean in English "varnished calf-skins," and a further invoice of goods designated therein as "varnished cow-skins."

The defendant, as collector of customs, imposed and collected duty on all the said goods at thirty-five per centum, under the classification of "patent japanned or enamelled leather or skins of all kinds," under color of tariff acts of March 2, 1861, § 22, and July 14, 1862, § 13, wherein such specific designations are found, granting thereon the reduction of ten per centum, provided by § 2 of the tariff act of June 6, 1872, for "leather not otherwise herein provided for." The plaintiffs duly protested to the collector, and appealed from his decision to the Secretary of the Treasury, and brought their action within the time prescribed by law, claiming that the goods were dutiable at twenty per centum only under the provisions of § 1 of the tariff act of June 6, 1872, for "upper leather of all other kinds, and dressed and furnished skins of all kinds not herein otherwise provided for."

14 The amount to be recovered by them, if anything, is, exclusive of costs, $172.39, principal, in gold, and $24.02, interest thereon to date of verdict at seven per centum per annum in currency.

Relative to the article imported by plaintiffs, the following testimony was given on plaintiffs' behalf, viz:

JOSEPH MOVIUS testified:

An importer of leather, at 38 Spruce street, New York. Have been in the business sixteen years. Identifies invoice per steamer Java from Liverpool, dated October 14, 1872, of 25 dozen "veaux vernis" (varnished calf-skins) No. 1, 5 dozen ditto No. 2. Entry of these goods was made by the plaintiffs, who described them on their entry as "one case patent leather," at the New York custom-house. The entry was dated October 31st, 1872. Duty was assessed and collected on them at thirty-five per cent., less ten per cent. thereof. Identifies also invoice per steamer Parthia, from Liverpool, dated June 26, 1872, of 25 dozen

"veaux vernis" No. 1, and 5 dozen No. 2, the entry of which at the New York custom-house was made by plaintiffs August 1st, 1872, who described the goods thereon as "one case of patent-leather," and duty was assessed and paid thereon at 35%, less 10% thereof. Identifies also invoice per Java, dated Nov'r 9, 1872, of 14 "varnished cow-
15 skins," which were entered by the plaintiffs at the New York custom-house, Dec'r 7, 1872, and who described them on the entry as "one case cow-skins," and duty was assessed and collected at 35%, less 10% thereof. The appraiser described the goods on this entry and classified them as "enamelled leather."

Sample produced of the "veaux vernis." It is a tanned, dressed, and finished skin. The skins are first tanned, then dressed, so called, i. e., softened by the application of some lubricating substance, shaven or cleaned, and then finished, that is to *to* say, everything else is done to them that is necessary to finally prepare them for use. In the case of ordinary calf-skins, this finish consists in simply blacking them. The trade name of the sample is "patent-leather," and its finish is produced by varnishing the tanned and dressed calf-skin. The word "finished" means no more in the trade than in ordinary use, viz, completed or prepared for use. The term "dressed and finished skins" is not a commercial designation, but is descriptive of the kind and degree of manufacture to which skins have been subjected.

16 Goods are not bought and sold under the name of "dressed and finished skins." After the skins are dressed there are many different varieties of finish, so that the skins when finally completed and finished for sale and use are dealt in under peculiar trade names, often derived from the peculiarity of the finish, like, for instance, roans, skivers, morocco, Russia leather, &c., or, as in the case of these importations, the calf-skin varnished and polished as patent-leather and the varnished cow-skins in the grain as enamelled leather. Calf-skins are imported in various degrees of manufacture; when tanned simply they are called technically "calf-skins in the brown." In making a sale of goods, if I were asked for "dressed and finished skins," I should ask you what you wanted, patent-leather or other finished skins. It is a term very seldom used, because people speak of the particular names of the goods themselves. The trade name of the varnished cow-skin is enamelled leather. There are a great many different kinds of skins imported into this country and in different conditions of manufacture; *by* each is commercially known by a distinctive trade name.

"Upper leather" is a trade term used in reference to a class of
17 goods made in this country, principally out of cow-hides or other heavy leather for the uppers of heavy boots and shoes. It is sometimes, but very seldom, applied to calf-skins. Neither of the two different kinds of imported goods in this case would be called in the trade "upper leather," although they were to be used for the uppers of boots and shoes. My experience extends over the past sixteen years, during all of which time the trade meanings of the terms to which I have testified have remained unchanged, and the terms "patent, japanned, or enamelled leather, or skins of all kinds," and the term "dressed and finished skins of all kinds," have no different meaning in the trade now than at any time during the past sixteen years.

SIMON MENDELSOHN testified:

I am an importer of leather and skins at No. 32 Spruce street, New York City, and have been such for the past fifteen years. I know the meaning of the commercial terms in that business. The sample shown

is called in our trade "patent-leather." The term "dressed skin" means skin that has been tanned and is getting prepared for use, i. e., dressed, so called. Dressing consists in softening it with
18 grease, shaving and cleaning it. The last step is to finish it, which comprises blacking or anything else that is necessary to make it ready for use. The different kinds of finish result from different processes. We call each finish by its specific name. The varnished cow-skins are known in the trade as "enamelled leather." A "dressed and finished skin" means a skin finally completed for use.

The defendant produced no witnesses, and the testimony was then closed.

The counsel for the defendant moved that the court direct the jury to find a verdict for the defendant on the foregoing testimony, claiming that the importations in question were subject to the rate of duty as levied by the collector.

And upon the foregoing testimony counsel for the plaintiff asked the court to charge the jury as matter of law:

I. If the jury find that the articles described in the invoices, or any of them, are "dressed and finished skins," within the ordinary and common meaning of these words, they must find for plaintiff.

II. That if the skins in suit are dressed and finished, within the
19 ordinary meaning of those words, the plaintiff must recover, unless it appears by a fair preponderance of testimony that at the date of the passage of the tariff act of June 6, 1872, the words "dressed and finished skins" had among importers and wholesale dealers in our markets a technical and confined meaning, which did not include varnished calf-skins or varnished cow-skins.

III. That the evidence shows that the articles described in the invoices as "veaux vernis" and "varnished cow-skins" are dressed and finished skins within the common meaning of those words, and the jury must find for plaintiff.

IV. That the testimony of the importers and wholesale dealers examined as witnesses shows that the articles described in the invoices as "veaux vernis" and "varnished cow-skins" are skins dressed and finished, and known to them under that general designation.

V. That, as matter of law, all skins dressed and finished were made dutiable under the act of June 6, 1872, sec. 1, @ 20 % ad valorem, unless otherwise provided for in said act, no matter under what
20 name they were known in previous tariff acts, and the skins in suit were not provided for in said act under any other form of words, and that accordingly the jury must find for plaintiff.

VI. That the 2nd section of the tariff act of June 6, 1872, providing for a reduction of duty on "leather not otherwise herein provided for," applies only to articles not elsewhere described and provided for in said act. That it cannot therefore apply to any article described by the words "skins dressed and finished, of all kinds not otherwise herein provided for in the first section of said act."

VII. That patent-leather or skins, and enamelled leather or skins, are dressed and finished skins, and covered by said words in said first section, hence the words in the 2nd section, "leather not otherwise herein provided for," cannot apply to or affect patent or enamelled leather or skins.

The court refused to instruct the jury as requested by plaintiff's counsel in each and all of the propositions hereinbefore set forth, and the plaintiff's counsel thereupon excepted to such refusals respectively, and to all of them.

Whereupon, there being no disputed question of fact, the court charged the jury, among other things, as follows, viz:

21 1st. The act of 1872, in the 1st section, in its terms is comprehensive enough to include all finished skins, and if there had not been previous legislation upon the subject, I quote now from the language of the court in Reiche vs. Smythe, 13th Wallace, "there might be some justification for the position that Congress did not intend to narrow the meaning of the language employed. If it be true that it is the duty of the court to ascertain the meaning of the legislature from the words used in the statute and the subject-matter to which it relates, there is an equal duty to restrict the meaning of general words whenever it is found necessary to do so in order to carry out the legislature intention, and it is fair to presume in case a special meaning were attached to certain words in a prior tariff act, that Congress intended they should have the same signification when used in a subsequent act in relation to the same subject-matter."

2nd. We have then to determine whether, when Congress used general terms in a subsequent statute, they intended to vary the duties specifically imposed in a previous statute upon the patent or en-

22 amelled leather, which is a distinct and separate kind of leather, the character of which is well known and universally understood.

I do not think they did. Such a conclusion is strengthened by reference to the subsequent section of the statute of June 6, 1872, which recognizes that there is not only a duty imposed upon skins dressed and finished of all kinds, but that there is also another and a different duty imposed upon "leather not herein otherwise provided for."

3rd. I think that by the second section Congress intended to say that the general words, "skins dressed and finished, of all kinds," do not include leathers particularly mentioned, either in this statute or specifically pointed out by well-known and understood terms in a previous statute.

In other words, I am of opinion that patent and enamelled leather stand as they did in 1861 and 1862, less 10 per cent.; that a duty is imposed upon that specific article, a particular kind of leather, and although these terms, "skins dressed and finished, of all kinds," are general terms, yet their meaning should be restricted when it is found necessary to

23 do so in order to carry out the legislative intent.

4th. My opinion is that the intention was to leave patent and enamelled leather where they were before, subject to a reduction of 10 per cent., and to impose a duty upon leathers of other kinds of 20 per cent. ad valorem.

5th. It is therefore the duty of the jury to return a verdict for the defendant.

The court having thus instructed the jury, the plaintiff's counsel then and there excepted to each and all of the propositions of said charge hereinbefore set forth.

The jury returned a verdict for the defendant under the foregoing instructions of the court; and inasmuch as the said several matters do not appear by the record, the plaintiff's counsel requested the judge of said court to allow and sign this bill of exceptions, and his honor did, in pursuance of said request and of the statutes in such case provided, so allow and sign this bill of exceptions, containing the several matters aforesaid, at and during the term of the court aforesaid, to wit, at the October term of 1874.

N. SHIPMAN, *Judge.*

24 (Endorsed:) U. S. circuit court, southern dist. of N. Y. Joseph Movius, survivor, &c., vs. Chester A. Arthur. Plaintiff's bill of exceptions. Filed Dec. 5, 1874.

To Judge Shipman:

Counsel for plaintiff & defendant agree that the within bill of exceptions be signed as within set forth.

Dated N. Y., Dec. 2nd, 1874.

Dec. 2, '74.

GEORGE BLISS,
U. S. Att'y.
HARTLEY & COLEMAN,
Att'ys for Pl'ffs.

25 Supreme Court of the United States.

JOSEPH MOVIUS, SURVIVOR, &C., PLAINTIFF IN error,
v.
CHESTER A. ARTHUR, DEFENDANT IN ERROR.
} In error. October term, 1875.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the said court, at the Capital, in Washington, came the said plaintiff in error, by Chase, Hartley & Coleman, his attorneys, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant in error, Chester A. Arthur, against the said plaintiff in error, Joseph Movius, whereas by the law of the land the said judg-
26 ment ought to have been given for the said plaintiff against the said defendant. And the said plaintiff prays that the judgment aforesaid, for the error aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to all things which has lost by occasion of said judgment, &c.

CHASE, HARTLEY & COLEMAN,
Attorneys for Plaintiff in Error.

(Endorsed:) U. S. Supreme Court. Joseph Movius, survivor, &c., plaintiff in error, vs. Chester A. Arthur. Assignment of error. Due service hereof admitted this 23d day December, 1874. Geo. Bliss, att'y for def't in error. Filed Dec. 23, 1874.

27 Supreme Court of the United States.

JOSEPH MOVIUS, SURVIVOR, &C., PLAINTIFF IN error,
vs.
CHESTER A. ARTHUR.
} In error. October term, 1875.

And afterwards, to wit, on the second Monday of October, in the same term, the said Chester A. Arthur, defendant in error, by George Bliss, his attorney, comes here into court and says that there is no error, either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof

now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

28 GEO. BLISS,
Attorney for Defendant in Error.

(Endorsed:) U. S. Supreme Court. Joseph Movius, survivor, &c., plaintiff in error, vs. Chester A. Arthur, defendant in error. Joinder in error. Due service hereof admitted this 23d day of December, 1874. Chase, Hartley & Coleman, att'ys for pl'f' in error. Filed Dec. 23, 1874.

29 *Bond for costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

JOSEPH MOVIUS, SURVIVING PARTNER, &C., pl'ff in error,
vs.
CHESTER A. ARTHUR, DEF'T IN ERROR.

Know all men by these presents that we, Joseph Movius, of No. 352 Bloomfield st., Hoboken, N. J., James D. Warner, of No. 199 Baltic st., Brooklyn, N. Y., and John F. Klumpf, of Jersey City, New Jersey, are held and firmly bound unto the above-named defendant in error in the sum of five hundred dollars, to be paid to the said defendant in error, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 18th day of December, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas the above-named Joseph Movius, &c., plaintiff in error, has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Joseph Movius, &c., plaintiff in error, shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

J. MOVIUS.
JA'S D. WARNER.
JOHN F. KLUMPF.

Sealed and delivered, and taken and acknowledged, this 18 day of Dec'r, 1874, before me.

R. E. STILWELL,
U. S. Com.

30 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Joseph Movius, James D. Warner, and John F. Klumpp, being duly sworn, doth depose and say, and each for himself sayeth, that he is

worth the sum of five thousand dollars, over and above all his just debts and liabilities.

J. MOVIUS.
JA'S D. WARNER.
JNO. F. KLUMPP.

Sworn to this 18th day of Dec'r, A. D. 1874, before me.

R. E. STILWELL,
U. S. Com.

The foregoing bond is approved as to form and amount and the sufficiency of the sureties. Dec'r, 21, 1874.

SAM'L BLATCHFORD,
District Judge.

(Indorsed:) Vol. Page U. S. circuit court. Joseph Movius, survivor, &c., vs. Chester A. Arthur. Bond for costs on writ of error. Proctor. Filed this 21st day of Dec'r, 1874.

31 By the honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To Chester A. Arthur, defendant in error:

Whereas Joseph Movius, survivor, &c., plaintiff in error, has brought and presented a writ of error, lately issued out of the Supreme Court of the United States, and said writ of error directed to the judges of the circuit court of the United States for the southern district of New York, stating that in the record and proceedings, as also in the rendition of the judgment of a plea in the said circuit court, before the judges thereof, between the said Joseph Movius, plaintiff, and Chester A. Arthur, defendant, a manifest error had happened, to the great damage of the said Joseph Movius; and whereas, for the correction of that error in due manner the said writ has been issued, returnable at the next stated term of the Supreme Court of the United States, at the city of Washington, on the second Monday of October, 1875:

You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of Octo-
32 ber, 1875, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the second circuit, the 21st day of December, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-ninth.

SAM'L BLATCHFORD,
Judge.

(Indorsed:) U. S. circuit court, southern district of New York. Joseph Movius, survivor, &c., v. Chester A. Arthur. Citation. Service of a copy of the within is admitted. December 23, 1874. Geo. Bliss, def't's att'y. Filed Dec. 23, 1874.

(Indorsement on cover:) No. 82. Joseph Movius, survivor of Francis Wigand, plaintiff in error, vs. Chester A. Arthur, collector of the port of New York. S. New York, C. C. U. S. Filed 23 June, 1875.

EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N. Y.

U. S. Supreme Court.

JOSEPH MOVIUS, SURVIVOR,
Plaintiff in Error,

vs.

CHESTER A. ARTHUR.

October Term, 1877.

No. 82.

Brief for Plaintiff in Error.

Statement of Facts.

Between August 1st and December 30th, 1872, the original plaintiffs imported, at New York, certain varnished skins, upon which defendant, as Collector of the port, exacted duty at the rate of ninety per cent. of thirty-five per cent. *ad valorem*, under color of sections 22, Act March 2, 1861, and 13 Act July 14, 1862 (12 Stats., 191, 192, 555, 556), which imposed duty at 35 per cent. on patent and enamelled leather or skins; and section 2, Act June 6, 1872 (17 Stats., 231, 232), which allowed ten per cent. reduction of duties on all leather not otherwise provided for in said act.

Plaintiffs claimed the importations *were "ot'erwise provided for"* by section 1 of said Act of June 6, 1872, which imposed duty at 20 per cent., *ad valorem*, "on upper leather of all other

" kinds, and *on skins* dressed and *finished, of all kinds, not herein* " *otherwise provided for*," and repealed the provisions of the earlier Acts of 1861 and 1862, upon "japanned, patent, or en- " amelled leather or skins," under which duty was assessed, they being "*finished skins*," and not otherwise provided for in the Act of 1872.

Plaintiff accordingly made due protest and appeal, and brought this suit.

The testimony, at the trial, was, that the goods imported were *varnished cowskins* and *varnished calfskins*, that they were *finished skins*, having the trade name of patent or enamelled leather, derived from their peculiar *finish*; that patent and enamelled leather or skins were, in fact, and as known to the trade, *finished skins* (Record, pp. 6 and 7).

This raises the single point, whether the Act of 1872, in providing for "finished skins of all kinds not therein otherwise provided for" repealed the Acts of 1861 and 1862, relative to " patent and enamelled leather or skins."

The testimony is in substance, as follows, viz. (Record, pp. 6 and 7): The sample produced of the skin imported, is a tanned, dressed, and finished skin. Skins are first tanned, then dressed, that is, softened by the application of some lubricating substance, shaven or cleaned, and *then finished*, that is to say, everything else is done to them necessary to finally prepare them for use. * * The trade name of the sample is patent leather and its *finish*, is produced by varnishing the tanned and dressed calfskin. The word *finished* means no more in the trade than in ordinary use, viz., completed or prepared for use. The term "dressed or finished skins" is not a commercial designation, but is descriptive of the kind and degree of manufacture * * Goods are not bought and sold under the name of dressed and finished skins. After the skins are dressed there are many different varieties of finish, so that the skin, when finally completed and *finished* for sale and use, is dealt in under a peculiar trade name often derived from the peculiarity of the *finish*, as roans, skivers, morocco, Russia leather, etc., or as in the case of these importations, the calfskin varnished and polished as patent leather, and the varnished cowskin, in the grain, as enamelled leather. * There are many different kinds of skins

imported, and in different stages of manufacture, but each is commercially known by a distinctive trade name. In making a sale of goods, if asked for dressed and finished skins, one would inquire what you wanted, patent leather, or some other finished skin.

Another witness testified that a "dressed skin" means a skin that has been tanned, and is getting prepared for use; that dressing consists in softening it with grease, shaving and cleaning it. The last step is to *finish* it, which comprises blacking, or anything else necessary to fit it for use. The different kinds of *finish* result from different processes, we call each *finish* by its specific name. The varnished cowskins are known in trade as enamelled leather. A "dressed and *finished*" skin means a skin finally completed for use.

The testimony establishes that the goods in suit are "*finished* skins," that they have gone through *three separate processes* known to the trade as tanning, dressing, and finishing; that the words "dressed and finished skins" include all skins that have gone through these three processes, and mean skins that are complete for use; that "*finished* skins" are bought and sold under the specific name indicating their peculiar finish. That the term "finished skin" is not a technical term, but is used in the trade in its common meaning, that it includes patent and enamelled leather, which are trade terms derived from the peculiar finish of the skin.

Thus we finally come to this issue, is the term "patent and enamelled leather or skins" in the Acts of 1861 and 1862 repealed by the larger term, "finished skins of all kinds, &c;" patent and enamelled leather being, by the evidence, "*finished skins.*"

We assign for error the refusal of the Court to charge as requested:

I.—If the jury find that the articles described in the invoice, or any of them, are "dressed and finished skins" within the ordinary and common meaning of those words, they must find for the plaintiff.

II.—That if the skins in suit are dressed and finished within the ordinary meaning of those words, the plaintiff must recover,

unless it appears by a fair preponderance of testimony that at the date of the passage of the Tariff Act of June 6, 1872, the words "dressed and finished skins" had, among importers and wholesale dealers in our markets, a technical and confined meaning which did not include varnished calfskins, or varnished cowskins.

III.—That the evidence shows that the articles described in the invoices as "veaux vernis and varnished cowskins" are dressed and finished skins within the common meaning of those words, and the jury must find for plaintiffs.

IV.—That the testimony of the importers and wholesale dealers, examined as witnesses, shows that the articles described in the invoices, as veaux vernis and varnished cowskins, are skins dressed and finished, and known to them under that general designation.

V.—That, as matter of law, all skins dressed and finished were made dutiable under the Act of June 6, 1872, section 1, at 20 per cent. *ad valorem*, unless otherwise provided for in said act, no matter under what name they were known in previous tariff acts, and the skins in suit were not provided for in said act under any other form of words, and that accordingly the jury must find for plaintiff.

VI.—That the 2d section of the Tariff Act of June 6, 1872, providing for a reduction of duty on "leather not otherwise herein provided for" applies only to articles not elsewhere described and provided for in said act. That it cannot, therefore, apply to any article described by the words "skins dressed and finished, of all kinds, not otherwise herein provided for" in the first section of said act.

VII.—That patent and enamelled leather or skins are dressed and finished skins and covered by said words in said first Section, hence the words in the 2d Section, "leather not otherwise herein provided for" cannot apply to or affect patent or enamelled leather or skins.

Also the charges of the Court as follows :

1st. The Act of 1872 in the 1st Section, in its terms is comprehensive enough to include all finished skins, and if there had not been previous legislation upon the subject—I quote now from the language of the Court in Reiche *vs.* Smythe, 13th, Wallace—there might be some justification for the position that Congress did not intend to narrow the meaning of the language employed. If it be true that it is the duty of the Court to ascertain the meaning of the Legislature from the words used in the statute and the subject matter to which it relates, there is an equal duty to restrict the meaning of general words whenever it is found necessary to do so in order to carry out the legislative intention, and it is fair to presume in case a special meaning were attached to certain words in a prior tariff act that Congress intended they should have the same signification when used in a subsequent act in relation to the same subject matter.

2nd. We have then to determine whether when Congress uses general terms in a subsequent statute they intended to vary the duties specifically imposed in a previous statute upon the patent or enamelled leather which is a distinct and separate kind of leather, the character of which is well known and universally understood ; I do not think they did."

3rd. I think that by the second section Congress intended to say that the general words, " skins dressed and finished of all kinds" do not include leathers particularly mentioned either in this statute or specifically pointed out by well known and understood terms in a previous statute. In other words I am of opinion that patent and enamelled leather stand as they did in 1861 and 1862 less 10 per cent. ; that a duty is imposed upon that specific article, a particular kind of leather, and although these terms, " skins dressed and finished of all kinds," are general terms, yet that their meaning should be restricted where it is found necessary to do so in order to carry out the legislative intent.

4th. My opinion is that the intention was to leave patent and enamelled leather where they were before, subject to a re-

duction of ten per cent., and to impose a duty upon leathers of other kinds of 20 per cent. ad valorem.

5th. It is therefore the duty of the jury to return a verdict for the defendant.

Tariff provisions on the subject of leather in force from March 2, 1861, to the date of these importations:

The Roman text is the law in force at the date of our importations (as we maintain); the portions in Italics we consider to have been repealed by subsequent legislation, notably by Section 1, Act June 6, 1872 (17 Stats., 230, 231).

Act March 2, 1861, Section 20 (12 Stats., 189, 190). From and after the day and year aforesaid there shall be levied, collected and paid a duty of twenty per centum on the importation of the articles hereinafter mentioned and embraced in this section, that is to say; * * * Leather tanned, *bend or sole, leather upper of all kinds except tanned calf skin which shall pay twenty-five per centum ad valorem* * * * skins tanned *and dressed of all kinds* * *

Section 22 (12 Stats., 190, 192).

From and after the day and year aforesaid there shall be levied, collected and paid a duty of thirty per centum on the importation of the articles hereinafter mentioned and embraced in this section, that is to say: *Japanned, patent or enamelled leather or skins of all kinds* * * * manufactures and articles of leather or of which leather shall be a component part not otherwise provided for.

Act Aug. 5, 1861, Section 2 (12 Stats., 293.) *From and after the day and year aforesaid, there shall be levied, collected and paid on the importation of the articles hereinafter mentioned the following duties, that is to say* * * *on sole and bend leather thirty per cent. ad valorem.*

Act of July 14, 1862, Sec. 13 (12 Stats., 555, 556, 557.) From and after the day and year aforesaid, in addition to the duties heretofore imposed by law on the articles hereinafter mentioned, there shall be levied, collected and paid on the goods, wares and merchandise enumerated and provided for in

this section, imported from foreign countries a duty of five per centum ad valorem.

* * *Japanned, patent or enamelled leather or skins of all kinds*

* * Leather tanned *of all descriptions.*

* * Manufactures and articles of leather or of which leather shall be a component part not otherwise provided for.

* * *Morocco skins.*

Act of June 6, 1872, Sec. 1 (17 Stats., 230, 231.) On and after the first day of August, 1872, in lieu of the duties heretofore imposed by law on the articles hereinafter enumerated or provided for imported from foreign countries, there shall be levied, collected and paid the following duties and rates of duties, that is to say :

On bend or belting leather and on Spanish or other sole leather, fifteen per centum ad valorem. On calfskins tanned or tanned and dressed, twenty-five per centum ad valorem. On upper leather of all other kinds, and on skins dressed and finished, of all kinds not herein otherwise provided for, twenty per centum ad valorem. On all skins, for morocco tanned but unfinished, ten per centum ad valorem.

Section 2 (17 Stats., 231, 232).

On and after the first day of August, 1872, in lieu of the duties imposed by law on the articles in this section enumerated, there shall be levied, collected and paid on the goods, wares and merchandise in this section enumerated and provided for, imported from foreign countries ninety per centum of the several duties and rates of duty now imposed by law upon said articles severally, it being the intent of this section to reduce existing duties on said articles, ten per centum of such duties that is to say. * * On all leather not herein otherwise provided for and on all manufactures of skins, bone, ivory, horn and leather except gloves and mittens, and of which either of said articles is the component part of chief value. * *

We say that section one, of the Act of June 6, 1872, repealed the portions of the prior acts printed in Italics, and that ten per cent reduction was allowed by section two of said act on the unrepealed parts of the earlier acts, viz: "Leather tanned," "skins tanned" and "manufactures and articles of leather or of which leather was a component part of chief value."

We hold that the term "japanned, patent and enamelled leather or skins of all kinds" in the acts of 1861 and 1862 falls within the larger term, "*finished skins of all kinds not herein otherwise provided for*" in section 1 Act June 6, 1872, patent and enamelled leather being by the evidence, a "finished skin" and not otherwise provided for in the act.

Argument.

As defendant moved for a direction at the close of plaintiff's case and demurred to the evidence he thereby admitted it to be true, with all the inferences that a jury could draw, and judgment should not have been ordered for defendant, if on any reasonable view of the testimony plaintiff could recover.

Thornton *v.* Bank of Washington, 3 Peters, 36, 40.
Pauling *v.* United States, 4 Cranch, 219.
Bank of U. S. *v.* Smith 11 Wheaton, 291.
Chenowith *v.* Haskell, 3 Peters, 92.

It is doubtful whether the court should have taken the case from the jury.

Lawrence *v.* Allen, 7 Howard, 797 and cases cited.
Law *v.* Cross, 1 Black, 533.
Tyng *v.* Grinnell, 2 Otto, 470.

The undisputed testimony is that the goods in question were varnished calfskins and varnished cowskins, that they were "*finished skins,*" having gone through three processes known in the trade, as 1st, tanning, 2nd dressing, 3rd finishing; more specifically they were called patent or enamelled skins from their peculiar finish, that such skins are of the class of goods known as finished skins, that all finished skins are generally called by the name of their peculiar finish to distinguish them from each other, as the term "finished skins" comprises a great variety of articles.

Where the facts are not disputed but different minds might

honestly draw different conclusions from them, the case must go to the jury.

Railroad Co., *v* Stout, 17 Wallace, 663–5.
Richardson *v* City of Boston, 19 Howard, 269.
United States *v* Morris, 1 Curtis, C. C., 61, 62.

II.

On the merits, the question is, whether the provision for "finished skins of all kinds not herein otherwise provided for" in the act of 1872, repealed the provision for "japanned, patent or enamelled leather or skins" in the acts of 1861 and 1862, such goods being by the undisputed testimony "*finished skins.*"

The court charged that the term "dressed and finished skins of all kinds not herein otherwise provided for" was comprehensive enough to include the articles in suit, but that there had been previous legislation by which the meaning of the term was limited so as to exclude therefrom patent and enamelled skins, that there had been a legislative intent to do so, and that the 2nd section of the Act of 1872, in reducing duties on "all leather not herein otherwise provided for" referred to patent and enamelled skins.

This is error, because there was no such previous legislation, as the court assumed to exist, qualifying the meaning of the term "finished skins of all kinds not herein otherwise provided for."

The term was used for the *first time* in the Act of 1872, and its meaning could not therefore be limited by reason of its use in any prior act.

The case of Reiche *v.* Smythe, cited by the court had therefore no application. It held that as "birds" and "animals" were separately distinguished in the Act of 1861, "birds" as one thing, and "animals" as another, that the use of the word "animals" in a later statue would not include "birds," it having thus acquired for tarriff purposes, a restricted meaning exclusive of "birds.." But here the term "finished skins" having

never been used in any tariff before the Act of 1872, its meaning cannot be so limited.

The evidence establishes that finished skins are skins that have been tanned, dressed and afterwards *finished* in a manner indicating adaptation to a particular use, and that the skins in suit are "*finished skins.*" By the evidence we must be governed.

Thus the only question is, does the term "finished skins of all kinds not herein otherwise provided for" repeal the term "patent and enamelled skins" in the earlier acts? Under the evidence it must.

No one form of words is necessary to work a repeal a general term is as effective as a particular one.

The words with which Section 1, Act June 6, 1872, is prefaced are words of repeal, and the provisions for "japanned patent and enamelled leather or skins, are, not merely inconsistent with the provisions of the Act of 1872, but are directly repealed by them.

The language of Section 1, reproduced in page 7 *supra*, is that * * * "in lieu of the duties heretofore imposed by law on the articles hereinafter enumerated or provided for imported from foreign countries, there shall be levied, collected and paid the following duties," &c.

These terms are held to be apt terms of repeal, and the usual terms so employed in revenue statutes. Washington Mills *v.* Russell, 18 Int. Rev. Rec., 203. The court there cited Gossler *v.* The Collector, tried before Justice Clifford, in which it is said "terms more explicit and comprehensive could not be employed, and the provision neither contains any exception or admits of any without the necessity of resorting to positive legislation." "This is not a case where the rules respecting repeals of a statute by implication are applicable or can be invoked to aid in the interpretation of the Statute."

Patent leather being by the evidence a "finished skin," the term finished skin takes its place by way of repeal. Still more to the point, Section 46, of the Act of June 6, 1872 (17 Stats., 258), repeals absolutely all inconsistent provisions in earlier acts, showing that *it* and not an earlier statute is the standard by which inconsistencies are to be measured, and avoiding the

rules of construction relative to conflicting statutes in *pari materia* by which the later legislative will is often defeated.

The Collector *v.* Richard, 23 Wallace, 260, 261.

The view of the court below was that all these statutes were in *pari materia*, and as repeals by implication were to be avoided, to reconcile if possible all the statutes, preserving as much as it could of the earlier ones.

Thus it deprived the Act of 1872, of much of its repealing effect and discriminated against it, when Congress had made it the *only* standard of inconsistency and repeal.

To reconcile apparently inconsistent statutes is laudable where repeal is claimed by *implication*, such repeals not being favored, but if Congress uses (as here) words of absolute repeal, to preserve any part of the old statute, by discriminating against the new is to defeat the legislative will. As to the alleged legislative intent to except patent leather from the "finished skins" provided for in the Act of 1872, we find that no finished skin whatever is so excepted unless "otherwise therein provided for."

Patent and enamelled skins are "not otherwise therein provided for," which is conclusive.

Further, the skins provided for in the Act of 1872 are finished skins *of all kinds*. Can language be more explicit?

And again, the term used is "finished skins of all kinds *not herein otherwise provided for*." Thus all "finished skins" are dutiable under the Act of 1872, generally or specially. As patent or enamelled skins are not named specially in the Act of 1872, they are dutiable as "finished skins." There is no escape from this, because if skins that are dressed and finished and not named specifically in the Act of 1872, are dutiable under specific designations in former laws, then the very expressive language used by Congress, goes for nothing.

"Herein" is a significant word used to prevent evasions of the statute by emphasizing the intention of Congress that the act in which it is used is to control all prior acts in reference to skins that are *finished*. It prohibits us from looking elsewhere for a duty on a finished skin.

The words "not herein otherwise provided for," have often

been used in tariff acts, to cut off earlier laws, and to prevent a defeat of the legislative will.

In the tariff Act of March 2, 1867, Sec. 2 (14 Stats., 561), the words "all manufactures of wool of every description made wholly or in part of wool not herein otherwise provided for," were used to make all manufactures of wool dutiable under that act alone.

In the Act of February 24, 1869 (15 Stats., 274), the words "all manufactures of copper, or of which copper shall be a component of chief value not *herein otherwise* provided for," were used to bring all manufactures of copper and of copper chief value under that act exclusively.

United States *v.* Ulman, 4 Benedict, 557, 558.

The word "herein" was inserted in section 21, Act July 14, 1870 (16 Stats., 262), by joint resolution of January 30, 1871 sec. 2 (16 Stats., 592, 593), between the words "otherwise" and "provided for" to give the Act of 1870, a like exclusive operation.

In Smythe *v.* Fiske *et al.*, 23 Wallace, 374, this court really inserted the same word by construction in the Act of June 30, 1864, Sec. 8, thereby giving that act an exclusive operation on silk goods, and cutting off all former provisions therefor in these same Acts of 1861 and 1862.

If such be the stringent effect of the word "herein," and if Congress found it necessary to pass a joint resolution to insert it when omitted by mistake, it cannot be ignored, when used.

The language shows that Congress not only intended, but emphatically declared that all *finished* skins not otherwise provided for by the Act of 1872, should be liable to duty under section 1.

Again the very sweeping language of Section 1 upon finished skins was designedly used and introduced by special amendment.

Congressional Globe, 2d session 42d Congress, '71 and '72, part 5, page 3898; debates May 27, '72.

The entry is: "The next amendment was in section 1,

line 23, to insert after the word 'all' the word 'other,' and in line 24 to insert the words 'not herein otherwise provided for,' so that the paragraph will read 'on upper leather of all other kinds and on skins dressed and finished of all kinds not herein otherwise provided for, twenty per cent *ad valorem*.' The amendment was agreed to."

We cannot therefore deny the effect of this very comprehensive and explicit term, without ignoring not only the evidence and the words of the law, but the very intent of Congress as gathered from its proceedings.

Section 2 of the Act of June 6, 1872, does not affect this construction, because while providing for ten per cent. reduction "on all leather not otherwise herein provided for," it leaves the question of what that leather is dependant on other parts of the Act. It does not affect patent leather unless it is "not otherwise provided for" in the Act of '72, under any form of words. As the testimony shows, it is covered by the words "finished skins," &c., in the first section of the Act, it cannot therefore be a "leather not herein otherwise provided for" under the second section.

The words in the second section, "all leather not herein otherwise provided for," are not words of limitation upon section one, which provides for "dressed and finished skins not otherwise herein provided for," but whatever the leather may be which is covered by section 2, it must be something *other* than *finished skins* because they are "*herein otherwise provided for*."

There is plenty of food for Section 2 to operate on. "Tanned leather" and "tanned skins" in the Acts of 1861 and 1862 are unaffected by section 1, because they are neither dressed nor finished skins, having only gone through one of the three distinct processes shown by the evidence, tanning, dressing and finishing.

See Schedule of laws above cited. Supra, pp. 6, 7, 8. Also Record, pp. 6 and 7.

III.

The Act of 1872 is a revising statute, superseding all former laws upon *finished* leather.

In section 1 it brings together all detached provisions of former Acts, using the apt words "finished skins of all kinds not herein otherwise provided for," as a drag net to sweep up any *finished skin* not therein enumerated by name. Can it be doubted that as patent leather according to the evidence is a *finished skin* that it is dutiable here?

Then the law provides for skins for morocco tanned, but *unfinished*, showing that not only is tanning one thing and finishing another, as the evidence shows, but that all unfinished morocco must come within its provisions. Section 2 grants upon leather not elsewhere provided for in the Act, and on manufacturers of leather, ten per cent reduction of duty. Manufacturers of leather, tanned skins and tanned leather, are not provided for fully by section 1, hence they receive ten per cent. reduction on former rates under section 2.

The Act is thus complete on the subject of leather in all its forms; the earlier Acts necessarily yield to the later and the intent of Congress as expressed therein. Whatever omissions there may be, they are not of any *finished skins*. Language could not provide for them more exhaustively.

Collector *v.* Richard, 23 Wallace, 246. Murdock *v.* City of Memphis, 20 Wallace, 616, 617.

We adopt the language of the court in Smythe *v.* Fiske (23 Wallace, 380) above cited, with the remark that the Act of 1864 was an act to increase duties as appears by its title and provisions, and the Act of 1872 is an act to reduce duties as appears by its title and provisions, so that whatever could be urged in behalf of an increase of duty in the one case, can be urged in behalf of a reduction of duties in the other. What the court there said upon the subject of silk, can here be said upon the subject of leather. The court said: "The object of the "statute was to increase the duties before imposed upon the "things which it embraces. The title and the context alike "show this. The preceding part of the section contains a very

"full enumeration of articles of silk, both manufactured and "unmanufactured. It was evidently intended to be exhaustive. "The last clause seems to have been added, as it is not unusual "in such cases, out of abundant caution that nothing might "escape. Hence the phrase 'not otherwise provided for' was "interposed, and meant to apply, not to preceding acts which "may not have been present to the mind of the draftsman, and "to which there was no necessity to recur, but to the preceding "enumeration in the same section which it supplemented. The "section thus construing this clause covers the whole subject of "silk in all its variety of forms. It was complete in itself. There "was no need to refer generally or specially to any prior act. "If there was conflict the prior legislation yielded necessarily, "*ipso facto*, to the later. All the manufactured articles enu- "merated in this section of the Act of 1864 were subjected to a "duty of sixty per cent. The duty imposed by the Acts of "1861 and 1862 is thirty-five per cent. Why leave the non- "enumerated articles covered by the Act of 1864 subject only "to this lower rate of duty? Why this distinction? Such a re- "sult would, we think, be a solecism and contrary to the spirit "and purpose of the act. It cannot reasonably be supposed "that such was the intent of the clause in question."

When a revising statute covers the whole subject matter of antecedent statutes, it virtually repeals them without any express provision to that effect, and even where some parts of the former acts are omitted in the new law, they are not in general regarded as left in operation, but as annulled, if it appear that the intention of the Legislature was to cover the whole subject matter by the revising statute.

Butler *v.* Russell, 11 Int. Rev. R. 30, 31, and cases cited.

U. S. *v.* Tynen, 11 Wallace, 92. Norris *v.* Crocker, 13 Howard, 438.

Concede this and the skins in suit are necessarily dutiable at twenty per cent. *ad valorem* under the Act of 1872, as "skins finished, of all kinds, not herein otherwise provided for."

IV.

The title of an act considered alone may have but little weight in the construction of its provisions, but when the title expresses the spirit, and accords with the provisions of the act, it should not be disregarded.

The Act of 1872 is entitled "An Act to *reduce* duties on imports," &c. (17 Stats., 230), and does so consistently throughout. On the particular subject of leather, sole and bend leather is reduced from 30 per cent. to 15 per cent.; calfskins, from 30 per cent. to 25 per cent.; untanned morocco, from 25 per cent. to 10 per cent., and upper leather, from 25 per cent. to 20 per cent.

The raw material of hides and skins formerly dutiable at 10 per cent. under section 8, Act July 14, 1862 (12 Stats., 551), are put on the free list in section 5, as also are hide cuttings and scrap leather (17 Statutes, 235).

Can it be doubted, without going further, that this act reducing duties on leather should receive such a construction as shall most fully effectuate that end?

V.

The terms "japanned, patent or enamelled leather or skins" in the Acts of 1861 and 1862, are enumerated as "*skins*"—patent or enamelled leather or *skins*, the words "leather" and "skins" being synonymous.

Such use of convertible terms in Tariff Acts is very frequent, for purposes of exhaustive description.

Numerous instances of the kind were brought to the notice of the court in Arthur *v.* Cummings, 1 Otto, 364, and the court, admitting such synonymous use, applied it to the terms in that case, "oilcloth foundations or floor-cloth canvas."

The skins in suit would have been dutiable under the Acts of 1861 and 1862, because they had been varnished or enamelled, and under the Act of 1872 because they had been "*finished*," patent and enamelled skins being "finished skins."

They were set apart in the Acts of 1861 and 1862 from other skins and made dutiable under their specific name as a separate kind of "skins," the name being derived from their peculiar "*finish.*"

In this state of the law, the Act of 1872 in its first section names, as liable to specific duty, various kinds of leather and skins, closing with the general terms "dressed and finished skins of all kinds not herein otherwise provided for."

"Finished skins" was a term never used in the tariff before, and must have been designed to mean something and to describe something more than the *tanned* and *dressed* skins named in the Acts of 1861 and 1862, and certainly so under the evidence in this case that *a finished skin* is something other and different from and advanced in manufacture beyond a *dressed skin.*

In the Acts of 1861 and 1862 we find no "*finished skin*" specifically named, except calf skins, upper leather and patent and enamelled leather or skins, all of which, except patent or enamelled leather or skins, are again specially named in section 1 of the Act of 1872.

"*Dressed skins*" in the Acts of 1861 and 1862 are also provided in for in the Act of 1872 as "*dressed skins,*" what effect then can the words "skins finished of all kinds not herein otherwise provided for" in the Act of 1872 have, unless they include "japanned, patent and enamelled skins?"

There is nothing else in the law for these very significant and comprehensive terms to act upon. Thus we must either say that Congress used these terms without meaning anything by them (which is contrary to the canons of construction), or we are forced to the conclusion that Congress meant to include, under the term "finished skins of all kinds not herein otherwise provided for," japanned, patent and enamelled skins.

Maillard *v.* Lawrence, 16 Howard, 260.

VI.

It was argued in the court below that the revision of the statutes should control as a legislative construction of the law prior to the revision.

But these importations were made and the suit begun before the revision, and we stand here as if there were no revision. Our legal rights were fixed before its passage.

The Twenty per cent. cases, 20 Wallace, 179, especially p. 187, and cases cited.

The right of the plaintiff to demand the excess of duties and bring this suit was under an express provision of statute.

Sections 13 and 14, Act June 30, 1864, 13 Stats., p. 214, 215.

If these importations were "finished skins not herein otherwise provided for" under section 1, Act of June 6, 1872, by a proper construction of the law as it then was, they remained dutiable under that act until the revision repealed it.

The revision disclaims any effect upon vested rights. Section 5597 withdraws all rights accrued and suits commenced, from its operation. Section 5596 does not pretend to show the state of the law before December 1, 1873, a year after the beginning of this suit.

The revision controls only importations made after its passage, not those made before. Otherwise, no importer's property would be safe.

It is a matter of history that the revisers consulted Treasury experts on disputed tariff questions.

Very naturally they would adopt the Treasury view in the absence of any other, but they never intended to take away existing rights and they said so. And they certainly never intended to make the Secretary of the Treasury the judge in his own case (which he would be), because it is on appeal from his decision that we are here.

The proper rule may be thus stated, that as judicial power is by the Constitution vested solely in the Courts and withheld from Congress, an Act of Congress which assumes to give construction to existing acts, to govern the decisions of the Courts as to cases which have arisen or are pending is inoperative except in *futuro*.

Postmaster Gen. *v.* Early, 12, Wheaton, 148.
Basset's Case 2, Court of Claims, 448, 450.
Home Mutual Ins. Co. *v.* Dickson, 15 Peters, 162.

When a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights. Fletcher *vs.* Peck, 6 Cranch, 135, 136.
Steamship Company *v.* Joliffe, 2 Wallace, 450.
Calder *v.* Bull, 3 Dallas, 388.

The true effect of the revision is thus stated by Judge Miller in Murdock *v.* City of Memphis, 20 Wallace, 617: "Whatever "might have been our abstract views of the effect of the Act "of 1867, we are as to all *future* cases bound by the law as "found in the Revised Statutes," and upon that limitation and implication we rest.

EDWARD HARTLEY,
Counsel for Plaintiff in Error.

Clifford

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

JOSEPH MOVINS, &c., PLAINTIFF IN ERROR,
vs.
C. A. ARTHUR, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE DEFENDANT IN ERROR.

The facts are sufficiently stated in the brief for the learned counsel for the plaintiff in error; and the statutes whose meaning is at issue are therein quoted, pp. 6 and 7.

The question is, whether *varnished calf-skins* and *cow-skins*, (or in other words *patent leather*,) imported in October and December, 1872, were dutiable under the first section of the act of 1872, ch. 315, as "skins dressed and finished of all kinds, not therein otherwise provided for," *or* under the second section of that act, as "leather not herein otherwise provided for."

The plaintiff contends for the former, and the defendant for the latter interpretation.

The plaintiff places his claim entirely upon the former

clause above quoted, and the errors assigned by him are in regard to that alone.

It is suggested by the plaintiff that the word "finished" in connection with the word "skins," being found for the first time in this act, is used *ex industria*, and has a special meaning, properly denoting skins that have been subjected to the process of japanning, or the like. However, it seems from the record that this word has no special signification in that connection. Any skins that are fit for a particular required use (whether of manufacture or other) are, as to such use, *finished skins*. *Band*-leather is *finished* for belts; sole-leather, for soles; upper-leather, for uppers. So, also, no doubt, patent-leather is finished for uppers, &c. But unless Congress intended in the act of 1872 to impose a duty of 25 per cent. upon *calf skins* when only *tanned and dressed*, and but 20 per cent. upon *calf-skins tanned, dressed*, and *finished*, it seems that the distinction between the paragraph under consideration and that immediately preceding must be found elsewhere than in the word *finished*. Inasmuch as the *omission* of the word *tanned* in the present clause is quite as significant as the *insertion* of the word *finished*, it may well be that Congress had in view therein duties upon *dressed and finished, but untanned* skins, especially as the next paragraph reverts to the subject of those preceding the clause before us, viz, *tanned* skins.

However, I submit that this question is to be settled by the *reason* and *spirit* of the statutes taken as part of a system running through several years of legislation. Admitting, for the purposes of the argument, that either of the clauses first above given may include patent-leather, other considerations than those arising out of the *mere* balk of phraseology must decide the doubt.

For instance:

1. If there be a general policy of the Government assigning higher duties to articles in a more advanced stage of manufacture, and lower duties to those less advanced, such policy may throw light upon this question.

2. If there be a policy imposing higher duties upon articles of comparative luxury and lower upon those of necessity, this also may throw light upon the present question.

3. If, the considerations drawn from the above topics *agree* as to their suggestions in this case, so much the more conclusive will such suggestions be.

4. If, besides, a definite policy as to the comparative rates of duty proper for various sorts of leather may be traced in congressional legislation other than that before us, then it seems plain that mere doubtful expressions in the statute supposed to be an exception to such policy cannot avail to establish such exception. If such doubtful words are relied upon as creating an exception to legislation *succeeding* as well as *preceding*, then their incompetency is the more evident.

I need dwell upon only the last of these topics.

The various tariff acts since that of 1846 (inclusive) have established a reasonably uniform scheme as to the comparative rates of duty to be imposed upon the various sorts of leather in ordinary use. As is usual in such legislation, the scheme has become more and more apparent, and is worked out more and more into detail as time passes. Patent-leather ("japanned") first appears specifically in the act of 1857; calf-skins, first in that of 1861. Previously, they were included under the general expression "upper-leather."

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The following are the rates of duty imposed upon the articles named below by the act of 1846, and those which have succeeded:

Act of 1846, (9 Stat., 42.)

Sole-leather ..... 20 per cent., (p. 47.)
Upper-leather ..... 20 per cent., (do.)

Calf-skins not named, but included in "upper-leather;" as was also patent-leather, under a decision in 1850. (Keutzen *v.* Lawrence, 1 Blatch., 615.)

Act of 1857, (11 Stat., 192.)

Sole-leather ..... 15 per cent., (p. 192.)
Upper-leather ..... 15 per cent., (do.)
Patent-leather, (japanned) ..... 19 per cent., (pp. 192–3.)

Calf-skins still included in upper-leather.

Act of 1861, (12 Stat., 179.)

Sole-leather ..... 20 per cent., (p. 189.)
Upper-leather ..... 20 per cent., (do.)
Calf-skins ..... 25 per cent., (do.)
Patent-leather ..... 30 per cent., (p. 192.)

Act of 1861, (12 Stat., 292.)

Sole-leather ..... 30 per cent., (p. 293.)
Upper-leather ..... 20 per cent., (p. 189.)
Calf-skins ..... 25 per cent., (do.)
Patent-leather ..... 30 per cent., (p. 192.)

Act of 1862, (12 Stat., 543.)

Sole-leather ..... 35 per cent., (p. 556.)
Upper-leather ..... 25 per cent., (do.)
Calf-skins ..... 30 per cent., (do.)
Patent-leather ..... 35 per cent., (do.)

Act of 1872, (17 Stat., 230.)

(As construed by the plaintiff.)

Sole-leather	15 per cent.,	(p. 230.)
Upper-leather	20 per cent.,	(do.)
Calf-skins	25 per cent.,	(do.)
Patent-leather	20 per cent.,	(do.)

(As construed by the defendant.)

Sole-leather	15 per cent.
Upper-leather	20 per cent.
Calf-skins	25 per cent.
Patent-leather	31½ per cent.

Revised Statutes, (p. 481.)

Sole-leather	15 per cent.
Upper-leather	20 per cent.
Calf-skins	25 per cent.
Patent-leather	35 per cent.

In other words, omitting the effect of certain exceptional policy during the war upon the subject of *sole-leather*, for the whole period of the twenty years during which *patent*-leather has appeared specifically upon the tariff acts, whenever taxed expressly, it has been taxed higher than either of the other named leathers, and this in accordance with a general rule in regard to articles of comparative luxury and articles in a higher stage of manufacture.

The question, therefore, is, whether one statute in the series shall, because of a doubtful expression therein, be construed in contradiction to this uniform line of policy.

These elementary propositions and questions seem to require no illustration by precedents.

I refer in general to Smythe *v.* Fiske. (23 Wallace, 374,) and Homer *v.* The Collector, (1 Wallace, 486.)

S. F. PHILIPS,
Solicitor-General.